Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	

COMMENTS OF GTE

GTE Service Corporation on
behalf of its telephone, equipment
and service companies

Gail L. Polivy
1850 M Street, N.W.
Suite 1200
Washington, D.C. 20036
(202) 463-5214

Their Attorney

November 8, 1993

TABLE OF CONTENTS

EXECUTIVE SUMMARY

In adopting rules to govern the developing mobile services marketplace, GTE urges the Commission to:

- Ensure that comparable, competitive services are treated consistently with respect to their regulatory rights and obligations;
- Forbear to the fullest permissible extent from the imposition of Title II common carrier regulatory requirements on commercial mobile services; and
- Demand a high level of justification from states seeking to extend or impose rate regulation on commercial mobile services.

Specifically, GTE submits that application of the definitional elements of "commercial mobile service" as well as any classifications of such services should ensure that comparable, competitive services enjoy the same regulatory status. This would cause common carrier-type personal communications service ("PCS") offerings as well as enhanced specialized mobile radio services ("ESMRs") to be regulated in the same manner as cellular and other common carrier mobile services. The public will benefit if such equal treatment includes extension of self-designation flexibility to all of these entities.

The Commission also should forbear from imposing most Title II regulatory requirements on commercial mobile service providers. The existence of an already competitive mobile services marketplace together with the introduction of numerous new competitive services and providers demonstrates that tariffing and other common carrier regulatory requirements are unnecessary to protect the public. In particular, tariff requirements would likely undermine competition and innovation in the delivery of mobile services. Similarly, TOCSIA requirements are unwarranted for mobile services, which are not covered by the

express terms of that legislation and have not experienced the problems which it was intended to address.

Finally, the Commission should adopt procedures for expeditious resolution of state requests to impose or extend rate regulation of commercial mobile services. States should bear a heavy burden of demonstrating that such regulation is necessary to protect consumers. In today's highly competitive mobile marketplace, neither federal nor state regulation is necessary to ensure the provision of services under terms, rates and conditions serving the public interest.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
	)	
Regulatory Treatment of Mobile Services	)	
	)	

COMMENTS OF GTE

GTE Service Corporation on behalf of its domestic telephone, equipment and service companies hereby submits its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned docket.[1] GTE is a leader in wireless telecommunications and the provider of cellular, satellite and other mobile radio services, including Airfone[tm] service and Railfone® service. In addition, GTE's domestic telephone companies provide paging services and interconnect with cellular and other wireless services. As detailed below, GTE strongly supports the efforts of the Congress and the Commission to promote the development of competitive mobile radio services. The establishment of rules and policies for mobile services that ensure regulatory parity while eliminating unnecessary federal and state regulation will affirmatively serve the public interest.

---

1 Notice of Proposed Rulemaking, GN Docket No. 93-252 (released Oct. 8, 1993) ("Notice").

I. INTRODUCTION

In enacting the regulatory parity provisions of the Omnibus Budget Reconciliation Act of 1993, Congress sought to achieve three basic objectives:

(1) Establishment of regulatory parity for mobile service competitors through new statutory standards for differentiating between private radio services and "commercial mobile services" subject to common carrier regulation;

(2) Removal of unnecessary federal regulatory requirements by empowering the FCC to forbear from imposing various Title II obligations upon mobile service providers; and

(3) Elimination of unnecessary state regulation through a statutory preemption of entry and rate regulation.[2]

To this end, Title VI of that Act amended Sections 3(n) and 332 of the Communications Act of 1934[3] to establish a Federal regulatory framework to govern the offering of all commercial mobile services.[4] New Section 332 provides that licensees will be classified either as providers of "commercial mobile services" ("CMS"), which will be treated as common carriers, or as providers of "private mobile services," which will not be so regulated. In addition, the FCC is authorized to establish the appropriate degree of regulation for commercial mobile service providers and to address certain transitional and related issues.

---

[2] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 6002(b), 107 Stat. 312, 392 ("Budget Act").

[3] 47 U.S.C. §§ 153(n) & 332 (1988).

[4] Notice ¶ 2; see H.R. Rep. No. 111, 103d Cong., 1st Sess. 260 (1993), reprinted in 1993 U.S.C.C.A.N. 373, 587.

As required under the legislation, the FCC has now proposed to promulgate rules to implement these "regulatory parity" requirements. The agency:

> seek[s] comment on proposals that would (1) address the definitional issues raised by the Budget Act; (2) identify various services, including PCS, affected by the new legislation and describe the potential regulatory treatment thereof; and (3) delineate the provisions of Title II of the Communications Act that will be applied to commercial mobile services and those provisions that, within the bounds of the discretion afforded by Congress, will be forborne.[5]

In addition, the Commission invites comment on the procedures to be utilized and factors to be considered in addressing state preemption issues.

GTE submits that the FCC can best realize Congressional objectives and enhance competition by adopting regulations consistent with the following principles:

- The Commission should ensure that comparable, competitive services are governed by the same regulatory rights and obligations;
- The Commission should generally exercise its power to forbear from common carrier regulation of CMS; and
- The Commission should impose a heavy burden on states seeking to justify retention or imposition of rate regulation of CMS and should act promptly in those cases where the filing of such a petition serves to keep rate regulation in place.

This three pronged approach will promote marketplace competition consistent with the public interest

---

5 Notice ¶ 2.

II. THE DEFINITIONS FOR COMMERCIAL MOBILE SERVICE AND PRIVATE MOBILE SERVICE SHOULD FAITHFULLY ADHERE TO THE STATUTORY STANDARDS AND CONGRESSIONAL OBJECTIVES

A. Commercial Mobile Service

New Section 332(d)(1) of the Communications Act states that a mobile service will be classified as a "commercial mobile service" if the service (1) is "provided for profit," and (2) makes "interconnected service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." "Interconnected service" is defined in Section 332(d)(2) as "service that is interconnected with the public switched network" or service for which an interconnection request is pending under Section 332(c)(1)(B). The Notice of Proposed Rulemaking seeks comment on how it should define or apply these elements.

1. Service Provided For Profit

The Notice suggests that the purpose of the "for profit" element of the standard is to make plain that a defining component of a commercial enterprise is its profit making nature.[6] It follows that government services, non-profit public safety services, and mobile radio systems dedicated solely to internal corporate use would not be classified as services provided for-profit.[7] GTE agrees that these services would fall outside the scope of the definition of a commercial mobile service.

---

6 Notice ¶ 11.

7 Id.

In addition, GTE supports basing the for-profit determination on whether the service as a whole is offered on a commercial basis, consistent with the use of the term "commercial" in Part 90 of the Commission's Rules.[8] As discussed in the Notice,[9] a mobile service would be deemed to be provided "for-profit" if the service offering as a whole is priced to earn a return for the licensee, even if the interconnected portion of the service is offered on a non-profit basis. This is necessary to foreclose the possibility that a licensee providing a for-profit service might seek to avoid the common carrier regulation applied to its competitors by artificially structuring its offering such that the interconnected portion of the service is included at cost. For similar reasons as well as to ensure regulatory parity for competitive services, "for-profit" resellers should be classified as CMS if they satisfy the additional criteria.

2. Interconnected Service

GTE believes the Commission is correct that, by use of the phrase "interconnected service," Congress intended to distinguish between those communications systems that are physically interconnected with the public switched network and those that are not only physically interconnected, but also make interconnected service available.[10] GTE supports an interpretation of this criterion that would find a mobile service to be providing "interconnected service"

---

8 See, e.g., Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, 6 FCC Rcd 2356, 2360-61 (1991) (explaining the difference between "commercial" and "non-commercial" systems under Part 90).

9 Notice ¶ 12.

10 Notice ¶ 15.

if the end user is afforded access directly or indirectly to the public switched network for the purpose of sending or receiving messages to or from points on the network, regardless of how the system is configured. Under this test, a mobile service would be deemed an "interconnected service" even if there is an intermediary, such as a reseller operating facilities obtained from another entity, between the facilities of the mobile service provider and the public switched network.

3. Public Switched Network

GTE agrees that the term "public switched network" ought to be considered interchangeable with "public switched telephone network." The Commission should, therefore, use its traditional definition of "public switched telephone network" in defining "interconnected service" under Section 332(d)(1).[11] This common understanding of the public switched network would encompass all facilities, both wire and radio, used to provide local and interexchange common carrier services.[12]

4. Service Available to the Public or to Such Classes of Eligible Users as To Be Effectively Available to a Substantial Portion of the Public

In general, GTE supports the Commission's proposal that a service would satisfy the publicly available criterion if it is either (1) offered to the public without restriction in the manner that existing common carrier services are offered to the general public; or (2) is one with such indiscriminate eligibility criteria as to be

---

11 Id. ¶ 22.

12 Id.

"effectively available" to large segments of the populace.[13] GTE is also of the view that Congress included this element in the definition of a commercial mobile service in order to exempt from common carrier regulation those services that are offered only to small or specialized user groups or service areas. For example, GTE does not believe that services customized to an individual user's requirements or restricted to a limited class of customers such as the Special Emergency Radio Service should be considered available to the public.

Similarly, GTE favors classifying services offered only within limited environments as not being available to a substantial portion of the public. Such services typically feature restricted public access, a customized, individually tailored service offering, and a discrete "on premise" location. These types of deployments would, thus, appear not to meet the definition of a CMS.

In contrast, GTE opposes any approach that would exempt a service from common carrier regulation solely on the basis of system capacity.[14] As the Commission knows, spectrum capacity is highly dynamic with numerous new technological choices emerging. Capacity-based classifications could have the perverse result of discouraging use of spectrum efficient advances.

5. Private Mobile Service

The Notice also seeks comment on the application of the definition of "private mobile service" contained in Section 332(d)(3). That section defines "private mobile service" as any mobile service that is not a commercial mobile service (as defined in Section 332(d)(1)) or the "functional equivalent of a commercial mobile service." Although the Commission states that this definition

---

13 Id. ¶ 23.

14 See id. ¶ 26.

is subject to several different interpretations, GTE submits that the purpose of the "functional equivalent" element plainly is to ensure that comparable services are regulated in an identical manner.

Most importantly, certain mobile services currently regulated as private radio services, for example, Enhanced SMRs ("ESMRs") such as NexTel, should be classified as commercial mobile services and regulated as common carriers. This is necessary to avoid the possibility that a service widely viewed by the marketplace as substitutable for a CMS would nevertheless escape common carrier regulation. Any other interpretation of the statute would undermine its ability to achieve Congress' parity goal.

It follows that the FCC's experience with the functional equivalency test used to determine "like communication services" under Section 202(a) can inform the agency's application of that concept in the mobile services context.[15] Customer perception -- which is the linchpin of the like services analysis -- is likewise the appropriate determinant of the need for comparable regulatory treatment under Section 332 because it will result in consistent treatment of services that are viewed as substitutes in the marketplace.[16] Moreover, use of this formulation brings with it the practical benefit of permitting reference to an established body of precedent when applying the new Congressional definitions to real-world services.[17]

---

[15] See Ad Hoc Telecommunications Users Comm. v. FCC, 680 F.2d 790, 795-96 (D.C. Cir. 1982). See also Notice ¶ 33.

[16] Notice ¶ 33. See also Ad Hoc Telecommunications Users Comm., 680 F.2d at 795-96 & n. 11.

[17] See, e.g., AT&T Communications Revisions to Tariff F.C.C. No. 12, 6 FCC Rcd 7039, 7041-46 (1991), aff'd, Competitive Telecommunications Ass'n v. FCC, No. 92-1013 (D.C. Cir. Aug. 6, 1993).

III. COMPARABLE, COMPETITIVE SERVICES SHOULD BE SUBJECTED TO COMPARABLE REGULATORY GROUND RULES

The FCC has requested comment on two related proposals in its Notice: first, whether it should establish differently regulated classes of commercial service providers and second, whether regulatory requirements may vary within a class of providers.[18] GTE submits that the public interest will be best served if all comparable, competing mobile service providers are classified consistently and face the same regulatory rights and obligations.

A. The FCC Should Group Services Which the Public Views as Substitutes In the Same Classification

The Notice states that existing common carrier mobile services that provide interconnected radiotelephone service to the public will generally be classified as commercial services.[19] Consistent with the principle of regulatory parity for comparable services, GTE agrees with this proposal. These services generally appear to fit the definition of CMS although, as discussed below, certain specialized applications for particular subscriber groups may more properly be classified as private offerings.

But, it is not sufficient that existing common carrier services alone be treated as CMS. Rather, ESMR providers such as NexTel and PCS licensees providing comparable, competitive services should be classified as commercial mobile service providers.[20] Indeed, the FCC has already stated its belief that

---

18 Notice ¶ 54.

19 Notice ¶ 41.

20 See discussion in Section II.A.5, supra.

"wide area SMR service should be considered available to a `substantial portion of the public' and therefore classified as commercial mobile service," unless it is otherwise excludable from that definition.[21] As shown below, all services that compete with one another should be placed in the same classification.

B. PCS and Other Mobile Services Must Be Subject to the Same Regulatory Rights and Obligations

Existing common carrier mobile service providers, ESMRs, and future PCS providers will offer substitutable services to the same market. Indeed, the PCS rules were written to ensure comparability with cellular services so as to facilitate inter-service competition.[22] The description of ESMRs set out in the Fleet Call proceeding demonstrates a similar degree of comparability for the services they are capable of offering.[23]

Imposition of different regulatory requirements on these services will introduce distortions into the market by subjecting only some of the participants to the substantial burdens inherent in traditional regulatory regimes. For example, regulation typically creates additional costs and delays in service introduction for carriers. It also requires public disclosure of competitively sensitive data and constrains responsiveness to consumer demands. Differential application of these requirements will reduce the overall level of competition,

---

21 See Notice ¶ 36.

22 Rules To Establish New Personal Communications Servs., 7 FCC Rcd 5676, 5688 (1992) (Notice of Proposed Rulemaking); see Rules To Establish New PCS Services, FCC 93-451, ¶ 18 (released Oct. 22, 1993), ("Second Report & Order") ("the new PCS industry is expected to compete with . . . cellular").

23 Waiver to Create ESMR, 6 FCC Rcd 1533, 1533-34 (1991)(Memorandum Opinion and Order).

together with the benefits of innovation and lower prices for the public. Moreover, any such artificial distinctions will become a continuing source of controversy as technological developments render the classifications dangerously manipulatable, if not wholly unsustainable.[24]

In view of these concerns, the FCC should neither group competitive services in different classifications nor differentiate the regulatory treatment of services within the same classification.[25] Rather, the public interest will be served by ensuring that the regulatory regime for mobile services adopted in this proceeding assigns comparable, competitive services the same rights and obligations.

C. Assuming All Mobile Service Providers Have the Same Rights, Flexibility To Provide Both Commercial and Private Services In the Same Spectrum Would Serve the Public Interest

Pending before the FCC is a petition to afford cellular carriers the regulatory flexibility necessary to offer a wide variety of new and improved services over their systems.[26] The record developed in that proceeding shows that granting such flexibility to cellular providers would further the Commission's public interest mandate under the Communications Act as well as promote the use of innovative technologies.[27] Surprisingly, however, the Notice nowhere

---

[24] Cf. Computer Use of Communications Facilities, 28 F.C.C.2d 267 (1971), modified sub nom. GTE Service Corp. v. FCC, 474 F.2d 724 (2d Cir. 1973).

[25] Cf. Notice ¶ 54.

[26] Petition for Rulemaking of Telocator , RM-7823 (filed Sept. 4, 1991) ("Telocator Petition").

[27] Id. at 1-5.

mentions this petition, yet proposes similar flexibility in regulatory treatment only for PCS providers. GTE submits that such relief should not be so limited.

The Notice proposes to give PCS licensees the ability to self-designate their regulatory status, depending on the types of services to be provided.[28] This would allow PCS providers to offer either commercial or private services, or both, within their licensed spectrum. But, to the extent potential PCS applications may be private, other comparable mobile service applications may be as well. If only PCS providers are allowed this flexibility, they would enjoy a significant and unwarranted competitive advantage over these other service providers. Because this would undermine the currently competitive mobile services marketplace, such regulatory flexibility should not be conferred on PCS alone.[29]

However, if self-designation flexibility is given to all competing mobile service providers, and assuming adequate certification procedures and other mechanisms to ensure compliance with regulatory requirements are adopted,[30] it would benefit the public in several ways.[31] First, flexibility allows efficient use of scarce spectrum since common carriers' extra capacity could be used for other purposes. Second, mobile service providers could introduce different services, such as advanced cordless phones, wireless PBX systems, local area networks,

---

[28] Notice ¶ 47.

[29] Nor should such flexibility, or any other advantage in terms of the types of services permitted to be provided or the terms under which they are offered, be implemented at different times for different services. The Commission should not create a headstart problem.

[30] See Notice ¶ 48.

[31] Of course, self-designation flexibility should not be permitted to be used in such a manner as to impair the rights of other entities to use spectrum in a shared environment, such as air-ground services.

and customized mobile telecommunications services tailored to particular user needs.[32] These benefits are fully documented in the Telocator petition now pending before the Commission.[33]

For similar reasons, the FCC should avail itself of this opportunity to clarify the rights of CMS providers generally to provide enhanced, fixed, and dispatch services. Although it has been commonly understood that existing Part 22 licensees have not only been allowed but encouraged to provide innovative enhanced offerings to their subscribers, some ambiguity has persisted because of certain antiquated language in the current rules. GTE therefore urges the Commission to state definitively that, like PCS providers, licensees under Part 22 may provide the full range of basic and enhanced services over their facilities.

Similarly, different limitations on the offering of fixed services for cellular providers than for PCS cannot be justified in light of regulatory parity requirements. Rather, cellular providers should have the same rights as PCS licensees to offer ancillary fixed services.[34] For example, the availability of cellular-based services such as alarm systems and highway call boxes would clearly contribute to the public interest.

It is likewise necessary for the fulfillment of Congressional objectives to permit all CMS providers to offer dispatch services. Capacity concerns can no longer legitimate such artificial market distinctions, but rather impede the efficient use of spectrum resources. Thus, the Commission should consider all of the

---

[32] In order to maximize competition, mobile service providers should retain the flexibility to use their capabilities to provide fixed services. This will only serve to increase both competition and the number of services available to consumers.

[33] Telocator Petition at 4-9, 14.

[34] Compare 47 C.F.R. § 99.3 with 47 C.F.R. § 22.930.

above and award all mobile services the same flexibility to offer innovative services.

IV. APPLICATION OF TITLE II TO COMMERCIAL MOBILE SERVICES

A. Traditional Common Carrier Regulation of Commercial Mobile Services Is Not Required to Protect Consumers or the Public Interest

The Commission observed in the Notice that cellular and PCS providers face significant competition both from within their own services and from each other.[35] It pointed, for example, to the extensive documentation of competition in the cellular market compiled in response to a petition for rulemaking filed by the Cellular Telecommunications Industry Association ("CTIA")[36] and the enormous new sources of competition that will arise from the recent PCS decision.[37] This same pattern of both existing and increasing competitive alternatives is evident throughout the various markets for mobile services.

The Commission has long recognized that the cellular marketplace is subject to vigorous competition on both a facilities and a resale basis.[38] This competition is conducted on the "basis of market share, technology, service

---

35 Notice ¶¶ 62-63.

36 CTIA Petition for Rulemaking, RM No. 8179 (filed Jan. 29, 1993). The record in the CTIA proceeding has been incorporated into the record in this docket.

37 Notice ¶ 62; Second Report and Order at ¶¶ 14-18.

38 See, e.g., Bundling of Cellular Customer Premises Equipment and Cellular Service, 6 FCC Rcd 1732, 1733 (1991) (Notice of Proposed Rulemaking).

offerings, and service price."[39] Additional competition for cellular carriers is presented by enhanced specialized mobile radio services ("ESMRs"), mobile satellite services ("MSS"), wireless in-building services, cordless phones, and certain landline offerings. With up to seven additional PCS licenses to be awarded in each market, it is clear that competition will only increase in the future. Thus, as explained below, the Commission should affirm its tentative conclusion that forbearance from the vast majority of Title II regulatory requirements is warranted for virtually all commercial mobile service providers.

B. The Commission Should Promptly and Fully Exercise Its New Forbearance Authority

The Congress has declared that the Commission may forbear from enforcing Title II requirements where:

(i) enforcement of a particular regulatory provision is not necessary in order to ensure that the charges, practices, classification, or regulations for or in connection with the mobile service are just and reasonable and are not unjustly or unreasonably discriminatory;

(ii) enforcement of such a provision is not necessary for the protection of consumers; and

(iii) such provision is consistent with the public interest.[40]

GTE submits that the vibrant competition described above will ensure that these conditions are fulfilled in the CMS market with respect to the vast majority of Title II requirements. As the agency has acknowledged, marketplace forces can and do "generally prevent unlawful behavior" because "customers would simply

---

[39] Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd 4028, 4029 (1992) (Report and Order).

[40] Notice ¶ 57; 47 U.S.C. 332(c)(1)(A).

move to other carriers."[41] Moreover, the absence of any "bottleneck" in CMS facilities or other leverage on the part one CMS provider over others eliminates any concern that one competitor could disadvantage others in the market in terms of entry or participation. The existence of such competition incontestably renders traditional common carrier regulation superfluous.

1. The FCC Should Not Require Tariffs for CMS

Tariff regulation in particular is not necessary for CMS. Competition between service providers and different types of services will ensure fair rates, as the Notice tentatively concluded. In fact, the FCC has found that the application of existing tariff requirements to non-dominant carriers is:

> not only unnecessary to ensure just and reasonable rates, but [is] actually counterproductive since it can inhibit price competition, service innovation, entry into the market, and the ability of carriers to respond quickly to market trends.[42]

GTE similarly has shown that "application of traditional tariffing requirements to [CMS] would undermine competition by forcing [providers] to conform their service offerings to a narrow spectrum of choices and to divulge confidential and strategic cost and pricing data to their competitors."[43] This would result in "price leadership, service limitations, and regulatory delay."[44] Moreover,

---

41 Id. ¶ 61 (footnote omitted).

42 Tariff Filing Requirements for Nondominant Carriers, FCC No. 93-401, ¶ 2 (released Aug. 18, 1993) (Memorandum Opinion and Order) (footnote omitted), erratum, No. 34716 (released Aug. 31, 1993).

43 Comments of GTE Mobile Communications Inc., RM-8179, at 8 (filed Mar. 19, 1993).

44 Id.

the filing and review of tariffs would impose enormous resource demands and administrative burdens on both CMS providers and the agency. This is far too high a price to pay for a regulatory mechanism that promises no countervailing public benefits in a competitive market.

2. Many Additional Title II Requirements Are Equally Unnecessary

Record keeping, reporting, accounting, depreciation, and transactional filing requirements should be forborne for the same reasons.[45] Since competitive market conditions make tariffs unnecessary, these measures -- which aid in the enforcement of tariff regulation -- similarly lack any utility. The same is true for provisions directing or permitting prescription of rates (Section 205), filing of contracts (Section 211), and authorization of construction (Section 214).[46] Management and merger limitations (Sections 212, 218 and 221) also are obviously irrelevant in a competitive market.

Moreover, the Congressional directive that the agency not forbear from exercising its authority under Sections 201, 202, and 208 of Title II and the Commission's decision not to forbear from related enforcement mechanisms ensure that the FCC retains the authority to address any limited market failures that might occur. Again, however, if only some service providers are required to file tariffs while competing providers are not, those who must file will be placed at a competitive disadvantage and competition will be decreased.

---

45 E.g., 47 U.S.C. §§ 211, 213, 215, 219 & 220 (1988).

46 Section 214 policies are adequately addressed by the Title III licensing process and the Commission's spectrum allocation rules.

Application of the other consumer protection provisions identified by the Commission (Sections 223, 225, 226, 227 and 228) to mobile services likewise appears to be unnecessary in GTE's experience. In particular, the Commission should forbear from enforcing Section 226, the Telephone Operator Consumer Services Improvement Act (TOCSIA). As GTE recently has explained,[47] such action is justified under revised Section 332 because: (1) enforcement of TOCSIA is not necessary to ensure that the charges, practices, classifications, or regulations for mobile services are not unjustly or unreasonably discriminatory; (2) enforcement is not necessary to protect consumers, and (3) declaring the provision inapplicable is consistent with the public interest.

Reasonable and non-discriminatory charges and practices. Enforcement of TOCSIA is not necessary to ensure reasonable charges and practices for mobile public phone services. Providers of these services already are subject to the non-discrimination requirement of Section 202 of the Act. Moreover, interstate services provided by mobile carriers to which TOCSIA might arguably apply are non-dominant and, therefore, presumptively lack the market power to engage in unreasonably discriminatory conduct. In addition, the economic interest of the service provider lies in maximizing demand for its offerings in order to build marketplace acceptance. Unreasonable rates or practices would deter consumers and lower revenues.

Protection of consumers. Enforcement of TOCSIA with respect to mobile phone services is not necessary to protect consumers. The legislative history reveals that when Congress considered TOCSIA, there was no evidence in the record of consumer abuses stemming from public mobile phone services. Nor,

---

47 See Petition for Reconsideration of GTE, MSD 92-14 (filed Sept. 27, 1993) ("GTE Petition for Reconsideration").

to GTE's knowledge, has the Commission ever received a complaint alleging OSP-type abuses by a mobile service provider. In fact, providers of public mobile phone services generally publish the rates and conditions relating to those services, as well as numbers that the user can dial to obtain additional information before incurring any charges. Moreover, unlike the OSP industry, mobile service providers have traditionally not blocked access to alternative long distance carriers. Consequently, consumers would not be confused or harmed by waiver of TOCSIA as applied to mobile public phone services.

The public interest. Waiver of TOCSIA is entirely consistent with the public interest. Full compliance with that statute would often be impossible or produce absurd results, as detailed in GTE's Petition for Reconsideration.[48] Even where compliance arguably is possible, mobile service providers would have to incur significant, unnecessary expenses. Imposing these costs on companies that operate in a robustly competitive market would hinder competition and harm consumers.

3. Cellular Providers Should Be Declared Non-Dominant

Finally, GTE requests that, as part of this rulemaking, the Commission expressly find that all cellular service providers are non-dominant. Support for this proposal can be found in the record developed in response to CTIA's petition, which the agency has incorporated into this docket. Moreover, if the Commission affirms its tentative conclusion that the cellular market is sufficiently

---

[48] GTE Petition for Reconsideration at 7-9 (explaining that many concepts underlying TOCSIA, such as "local," "toll," and "distance-sensitivity," often do not apply in the mobile context and that customers fully appreciate the distinctions between public mobile phone services and landline operator services); id. at 11-18 (detailing the implementation difficulties).

competitive to render rate regulation unnecessary, it will necessarily have found that cellular carriers lack market power and, hence, are non-dominant. Accordingly, no purpose would be served by maintaining this anachronistic dominant designation, particularly under the new regulatory regime established by Section 332.

C. No Additional Regulatory Requirements Should Be Placed on Mobile Service Affiliates of Wireline Carriers

The Notice requested comment on whether additional regulatory requirements should be placed on dominant common carriers with affiliated commercial mobile service providers. GTE believes that wireline and nonwireline service providers should be treated similarly since they are competing in the same markets. Additional regulation placed on the wireline carrier or its affiliated mobile service providers would put them at a competitive disadvantage, lessening competition and injuring consumers.

V. SOUND MOBILE SERVICE INTERCONNECTION RIGHTS SHOULD BE ENSURED

In the Notice, the Commission observes that, as amended, new Section 332(c)(1)(B) of the Communications Act requires the agency to order a common carrier to interconnect with a commercial mobile service provider on reasonable request.[49] That section also states that "this subparagraph shall not be construed as a limitation or expansion of the Commission's authority to order interconnection" under the Communications Act. The Commission seeks

---

[49] Notice ¶ 69.